

LAW OFFICE OF BERTRAM C. OKPOKWASILI

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Attorney for Plaintiff, Catherine V. Coyle

CATHERINE V. COYLE,
Plaintiff

v.

JERSEY CITY BOARD OF EDUCATION,
and JERSEY CITY PUBLIC SCHOOLS,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY

CASE: HUD L 000514-19

CIVIL ACTION

**PROPOSED AMENDED COMPLAINT
IN LIEU OF PREROGATIVE WRITS**

**Temporary Restraints Requested
Summary Action Requested**

Plaintiff Catherine V. Coyle ("Plaintiff"), by and through her counsel, Bertram C.

Okpokwasili Esq. alleges the following for her Verified Complaint:

PRELIMINARY STATEMENT

1. This matter arises from an Emergency Meeting held by the Jersey City Board of Education ("JCBOE") on February 3, 2019 (the "Emergency Meeting") and the Special Meeting the JCBOE held on February 4, 2019 at 4:30 P.M. ("Special Meeting2")

BACKGROUND FACTS

I. The January 24, 2019 Special Meeting

2. On January 24, 2019, the JCBOE held a Special Meeting. ("Special Meeting 1")
3. Upon information and belief, this meeting was held in violation of the Open Public

Meetings Act, (“OPMA”), as the JCBOE did not post notices forty-eight hours in advance of the January 24, 2019, meeting in its two newspapers of record.

4. The JCBOE stated on its public Board docs that it posted an advertisement to the Jersey Journal on January 17, 2019.

II. The January 31, 2019 Regular Meeting

5. On January 31, 2019, the JCBOE held a regularly scheduled Board Meeting (the “January 31 Meeting”).¹
6. At the January 31 Meeting, Board Member Mussab Ali moved to relive the Superintendent of Schools, Dr. Marcia Lyles, of her duties pursuant to the terms of her individual employment agreement and N.J.S.A. 18A:27-9.²
7. The Board passed the motion with seven (7) Members voting “yes,” one (1) voting “no” and one (1) abstaining.³
8. The Board then moved to appoint Associate Superintendent Franklin Walker to assume the day-to-day affairs as Chief District Administrator and to appoint Associate Superintendent Ellen Ruane to assist Franklin Walker in the day-to-day affairs in the curriculum and instruction areas.⁴
9. Franklin Walker and Ellen Ruane were appointed with eight (8) “yes” votes and one abstention.⁵
10. Upon information and belief, on February 1, 2019, the Interim Executive County

¹ Video of January 31, 2019 BOE Mtg. *available at* http://www.jcboe.org/boe2015/index.php?option=com_content&view=article&id=183&Itemid=1104 at timestamp 2:38:05 through 2:41:34.

² Id.

³ Id.

⁴ Id.

⁵ Id.

Superintendent sent a letter to the JCBOE President, Sudhan Thomas, stating, I have determined that the board resolution terminating Dr. Lyles ...is...invalid and void.”

11. On Sunday, according to the Board President Sudhan Thomas, the “State Department of Education stayed the Interim Executive Superintendent’s action on February 3, 2019 to provide the Board the opportunity to clarify its action and has recommended that the Board adopt a resolution “clarifying” its Board’s intention to place the superintendent on administrative leave with pay⁶.
12. On Sunday, February 3, 2019 at 5:06 P.M., Board President Sudhan Thomas sent an e-mail to the Board of Trustees calling “an emergency meeting” at 5:30 P.M. that same day without the required 48-hours’ notice, as “to discuss/deliberate and pass a clarifying // surrounding the resolutions passed by the Board at its Thursday, 01/31/2019 Board meeting.”⁷
13. The JCBOE lacked the authority to hold this Emergency Meeting, as it failed to meet the “emergency criteria” set forth in N.J.S.A. 10:4-9(d), including without limitations, the requirement that the situation necessitating the emergency meeting be a “crisis requiring immediate action.”
14. Upon information and belief, the JCBOE passed a Resolution clarifying and reiterating the Regular Meeting Resolution and placing Dr. Lyles on administrative leave for the duration of her contract which ends June 30, 2020 (the “Emergency Meeting Resolution”).
15. Because the “Emergency Meeting” was violative of the OPMA, all actions taken at the

⁶ JCBOE President’s report, Board Meeting, (Feb 4. 2019, 4:30pm)

⁷ Matt Schapiro (@MattSchapiroJC), TWITTER (Feb. 3, 2019, 4:50 P.M.), <https://twitter.com/MattSchapiroJC/status/1092223724277977088>.

meeting, including the Emergency meeting Resolution, are void.

III. The February 4, 2019 Special Meeting

16. The JCBOE held a Special Meeting on February 4, 2019 at 4:30 P.M. (the "Special Meeting 2").⁸
17. In violation of the OPMA, upon information and belief, the JCBOE did not post notices forty-eight hours (48) in advance of the February 4, 2019 meeting in its two newspapers of record. Instead, on February 1, 2019, the JCBOE posted a link to the Notice of the Special Meeting on Facebook,⁹ and sent an advertisement to be posted in the Jersey Journal. The JCBOE listed on its website docs that it had posted the meeting with the Jersey Journal, only one of its designated newspapers. This is not sufficient notice pursuant to OPMA.
18. By electronic email, the plaintiff had served the JCBOE and its counsel the complaint filed on February 4, 2019 before the 4:30pm meeting.
19. Upon information and belief, JCBOE amended their agenda to ratify the Emergency Resolution from the Emergency meeting on February 3, 2019.
20. Upon information and belief, during the meeting, JCBOE counsel in substance, stated in response to a question about proper notice for the February 4 meeting, that JCBOE delivered the meeting notice 48 hours in advance of the meeting but it's not their (JCBOE's) fault if the paper didn't post it.

⁸ Notice of Special Meeting *available at* http://www.jcboe.org/boe2015/images/Benefits/Spec-Mtg-2.4.2019-AD.pdf?fbclid=IwAR0VchrBJJB0hqm37HiEYnfijD2YjL4oPegS-Dc_owJiu2AE3LdN62ZBkdQ.

⁹ The School District of Jersey City, FACEBOOK (February 1, 2019, 4:39 P.M.) https://www.facebook.com/pg/TheSchoolDistrictOfJerseyCity/posts/?ref=page_internal.

21. Per a Reorganization Meeting held on January 2, 2019, the JCBOE, by consent, designated the Jersey Journal and the Hudson Reporter as “the official newspaper for legal advertisement” and as “the additional newspaper to receive forty-eight-hour notices of special meeting” respectively.¹⁰ Upon information and belief, no notices were posted in either newspaper before the meeting.
22. The actions of the JCBOE are clearly in violation of the OPMA.
23. The action seeks temporary and permanent injunctive relief restraining the JCBOE and any related entities from holding any Special Meetings without complying with the OPMA; restraining the JCBOE and any related entities from taking any action to implement the Emergency Meeting Resolution; and setting aside the Emergency Meeting Resolution pending a determination of whether it should be declared void.

PARTIES

24. Plaintiff Catherine V. Coyle is a resident and tax payer of Jersey City, residing at 485 Marin Blvd., Apt 106, Jersey City, New Jersey 07302.
25. On information and belief. Defendant JCBOE is an entity originally authorized under New Jersey statutes to conduct the public business of education in the State of New Jersey, and to act on behalf of the Jersey City School District. JCBOE has its principal place of business at 346 Claremont Avenue, Jersey City, New Jersey 07305.
26. Defendant Jersey City Public Schools (“JC Public Schools,” and together with JCBOE, “Defendants”) is a government entity responsible for administering the public-school system of Jersey City, New Jersey. On information and belief, JC Public Schools has its

¹⁰ Consent Action available at:
<https://www.boarddocs.com/nj/jcps/Board.nsf/goto?open&id=B6WJ2S4A9B74>.

principal place of business at 346 Claremont Avenue, Jersey City, New Jersey 07305.

27. Defendants JCBOE and JC Public Schools are public agencies as that term is defined by N.J.S.A. 47:1A-1.1.

JURISDICTION AND VENUE

28. This Court has subject matter jurisdiction over this action pursuant to R. 4:69-1 et seq. and R. 4:3-1 et seq.

COUNT I

TEMPORARY/PRELIMINARY/PERMANENT INJUNCTIVE RELIEF, INVALIDATING ACTIONS TAKEN BY THE JCBOE AT THE FEBRUARY 3, 2019 "EMERGENCY" MEETING FOR VIOLATIONS OF THE OPEN PUBLIC MEETINGS ACT

29. The allegations contained in each of the paragraphs above are incorporated herein by reference.
30. The Open Public Meetings Act demands that, with limited exceptions, "no public body shall hold a meeting unless adequate notice thereof has been provided to the public." N.J.S.A. 10:4-9. "Adequate notice" ensures not only that the public is apprised of where and when a meeting is to take place, but also apprised of what agenda items are to be discussed at that meeting. N.J.S.A. 10:4-8(d).
31. Specifically, "adequate notice" is defined as "written advance notice of at **least 48 hours**, giving time, date, location and, to the extent known, the agenda of any regular, special or rescheduled meeting, which notice shall accurately state whether formal action may or may not be taken..." Id. (emphasis added.)
32. The Jersey City Board of Education convened the Emergency meeting upon less than twenty-four hours' notice, which does not constitute adequate notice under the OPMA.
33. The OPMA contains an emergency exception process that allows or a public body to hold

a meeting without notice if 1) the meeting is required “in order to deal with matters of such urgency and importance that a delay for the purpose of providing adequate notice would likely result in substantial harm to the public interest,” 2) the meeting is limited to discussion of and acting with “respect to such matters of urgency and importance,” 3) the notice of such meeting is provided as soon as possible following the calling of such meeting by posting written notice of the same in certain public places and by notifying newspapers; and 4) either the “public body could not reasonably have foreseen the need for such a meeting at a time when adequate notice could have been provided,” or “although the public body could reasonably have foreseen the need for such meeting at a time when adequate notice could have been provided, it nevertheless failed to do so.”

N.J.S.A. 10:4-9(d).

34. The Emergency Meeting was called on February 3, 2019, with an advance notice of only twenty-four (24) minutes, by way of email received by Members at 5:06pm, for a meeting to be held at 5:30pm.
35. It is important to note that February 3, 2019 was Super Bowl Sunday and it is likely that all members were not readily available and capable of traveling for this meeting on twenty-four (24) minutes notice.
36. Despite declaring that an “emergency” existed such that the JCBOE could not provide the adequate notice mandated by the OPMA, no such emergency existed, and there was sufficient time for the JCBOE to provide adequate notice to the public under the statute.
37. Specifically, there was no substantial threat of harm to the public interest, as clarifying a resolution which was passed at the prior January 31, 2019 meeting, is not a ground for holding an emergency meeting under the OPMA.

38. The JCBOE could have easily waited one more day and complied with the notice requirements of the OMPA without “substantial harm to the public.” N.J.S.A. 10:4-9.
39. Rather, it is apparent from the record that the “Emergency Meeting” was convened in order to clarify and reiterate resolutions passed by the Board at its January 31, 2019 meeting.
40. The JCBOE did not comply with all the requirements for holding an emergency meeting under N.J.S.A. 10:4-9.
41. The “Emergency Meeting” was conducted in violation of the OPMA and accordingly the Resolution and all actions taken at the meeting should be declared null and void.
42. Based on the foregoing, Plaintiff seeks to preserve the status quo in that it seeks an order from this Court restraining the JCBOE from taking any action in violation of the OPMA and setting aside all actions taken at the February 3, 2019 “Emergency meeting”.

COUNT II

TEMPORARY/PRELIMINARY/PERMANENT INJUNCTIVE RELIEF FOR JCBOE’S AND JC PUBLIC SCHOOLS’ FAILURE TO GIVE ADEQUATE NOTICE OF SPECIAL MEETING

43. The allegations contained in each of the paragraphs above are incorporated herein by reference.
44. The OPMA demands that, with limited exceptions, “no public body shall hold a meeting unless adequate notice thereof has been provided the public.” N.J.S.A. 10:4-9.

“Adequate notice” ensures not only that the public is apprised of where and when a meeting is to take place, but also apprised of what agenda items are to be discussed at that meeting. N.J.S.A. 10:4-8(d).
45. Specifically, “adequate notice” is defined as “written advance notice of at least 48 hours,

giving time, date, location and, to the extent known, the agenda of any regular special or rescheduled meeting, which notice shall accurately state whether formal action may or may not be taken and which shall be (1) prominently posted in at least one public place reserved for such or similar announcements, (2) mailed, telephoned, telegraphed, or hand delivered to at least two newspapers which newspapers shall be designated by the public body to receive such notices because they have the greatest likelihood of informing the public within the area of jurisdiction of the public body of such meetings, one of which shall be the official newspaper, where any such has been designated by the public body or if the public body has failed to so designate, where any has been designated by the governing body of the political subdivision whose geographic boundaries are coextensive with that of the public body” Id.

46. For purposes of complying with the 48-hour notice requirement, The Jersey Journal and the Hudson Reporter are designated as the newspapers to receive notices of special meetings.
47. Upon information and belief, JCBOE did not post notices in both the designated papers for the public to have notice of the special meeting scheduled for February 4, 2019.
48. As a result, the special meeting held on February 4, 2019 does not comply with the statutory requirements of the OPMA.
49. Based on the foregoing, Plaintiff seeks to preserve the status quo in that it seeks an order from this Court restraining the JCBOE from taking any action in violation of the OPMA and setting aside all actions taken at the February 4, 2019 “Special meeting 2”.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests that this court enter judgment and provide the

VERIFICATION

I, Catherine V. Coyle, I certify, under penalty of perjury, that (i) I have read the foregoing amended Verified Complaint and the allegations contained therein; (ii) the allegations contained therein are true and correct to the best of my personal knowledge and belief, except as to those allegations that are made upon information and belief; and (iii) as to the allegations made upon information and belief, I believe those to be true.

Dated: February 7, 2019

By: Catherine V. Coyle
Catherine V. Coyle

following relief:

- a. Voiding all actions taken at the January 24, 2009, ("Special Meeting 1") for violation of the notice requirement under the OPMA.
- b. A declaration that the JCBOE actions on January 24, 2019 are void and without effect;
- c. Voiding all actions taken at the February 3, 2019 "Emergency Meeting" for violation of the notice requirement under the OPMA, including but not limited to dissolving the Resolution;
- d. A declaration that the JCBOE actions on February 3, 2019 are void and without effect;
- e. Voiding all actions taken at the February 4, 2019 "Special Meeting 2" for violation of the notice requirement under the OPMA;
- f. Granting a permanent injunction mandating that the JCBOE strictly adheres to New Jersey Laws applicable to the Public Meeting process; and
- g. Such other and further relief as the Court may deem proper.

Dated: February 2, 2019

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APPLICATION FOR SUMMARY ACTIONS

Pursuant to R. 4:67-2(a), Plaintiff requests that the Court hear this action as a summary action and issue an Order to Show Cause why Plaintiff is not entitled to the relief as requested above.

In support of this application, Plaintiff submits that this action can be completely disposed of on the record or on minimal testimony in open court. The actual controversy here involves legal principles, documents and testimony in the public record that are not in dispute, and the application of statutory and case law to the undisputed facts. These issues are primarily, if not purely, legal in nature, and the resolution of the case will be dependent on how the Court disposes of these legal issues.

Therefore, summary disposition of this action is not only permitted but conserves the parties' and judicial resources.

Dated: February 8, 2019

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DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:5-1, the undersigned are hereby designated as trial counsel for Plaintiff,
Catherine V. Coyle, in the above matter.

Dated: February 8, 2019


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CERTIFICATIONS

I hereby certify pursuant to R. 4:5-1 that this matter is not the subject of any other action pending in any court or of a pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated. I further certify that I am unaware of any non-party who should be joined in action pursuant to R. 4:28 or who is subject to joinder pursuant to R. 4:29-1(b) because of potential liability to any party based on the same transactional facts. I further certify that the within pleading was filed and served within the time required by R. 4:6.

Dated: February , 2019

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CATHERINE V. COYLE,
Plaintiff

v.

JERSEY CITY BOARD OF EDUCATION,
and JERSEY CITY PUBLIC SCHOOLS,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY

DOCKET NO.:

CIVIL ACTION

**PLAINTIFF'S BRIEF IN SUPPORT OF
THE MOTION FOR LEAVE TO FILE AN
AMENDED COMPLAINT**

Your Honor:

I am an attorney of The Law Office of Bertram C. Okpokwasili, that represents the Plaintiff Catherine V. Coyle in the above matter. Please accept this letter brief in lieu of a more formal brief in support of Plaintiff's motion for leave to file an amended complaint pursuant to N.J. Ct. R. 4:9-1-3.

LEGAL ARGUMENT FOR LEAVE TO FILE AMENDED COMPLAINT

The motion for leave to amend "is required by the rule to be liberally granted and without consideration of the ultimate merits of the amendment." Pressler, Current N.J. Court Rules, comment on R. 4:9-1(2015); see also Notte v. Merchants Mut. Ins. Co., 185 N.J. 490, 500-511 (2006) ; Kernan v. One Washington Park, 154 Park N.J. 437, 456-457 (1998). An "objection to the filing of an amended complaint on the ground that it fails to state a cause of action should be determined by the same standard applicable to a motion to dismiss under R. 4:6-2(e) . Maxim Sewerage v. Monmouth Ridings, 273 N.J. Super. 84, 90 (Law Div. 1993).

N.J. Ct. R. 4:9-1 states:

A party may amend any pleading as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is to be served, and the action has not been placed upon the trial calendar, at any time within 90 days after it is served. Thereafter a party may amend a pleading only by written consent of the adverse party or by leave of court which shall be freely given in the interest of justice. A motion for leave to amend shall have annexed thereto a copy of the proposed amended pleading. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 20 days after service of the amended pleading, whichever period is longer, unless the court otherwise orders.

N.J. Ct. R. 4:9-1.

Liberality of the amendment “is ...especially appropriate in matter affecting the public interest.” *Springfield Tp. v. Board of Educ.*, 217 N.J. Super. 570 (App. Div. 1987), *DYFS v. M.V.*, 398 N.J. Super 266, 288 (App. Div. 2008); Pressler, Current N.J. Court Rules, comment on R. 4:9-1(2015). Moreover, “an amendment of a complaint should be allowed as of course if the litigation has just commenced and the complaint would otherwise be subject to dismissal for failure to state a claim”. *Muniz v. United Hsps. Med Ctr. Pres. Hsp.*, 153 N.J. Super. 79 (App. Div. 1977).

This case affects the public interest as it is about the duty of the JCBOE, (a public body per the OPMA), to comply with the specific 48-hour public notice requirements of the OPMA including but not limited to that it should advertise its meetings in two designated newspapers or journals. The JCBOE’s recent pattern of violating the OPMA can only be reversed by this court requiring the JCBOE to follow the strict requirement of the OPMA and granting plaintiff’s request for a permanent injunction mandating the JCBOE strictly adheres to New Jersey laws applicable to the Public Meeting process. The OPMA was enacted to legislate that public governing bodies, including Boards of Education, comport with the transparency, openness and accountability the public expects, and more importantly the law strictly requires. Plaintiff did not include in its initial complaint that the JCBOE failed to meet the OPMA requirement that a meeting should be publicized in two newspapers 48 hours before the meeting. This January 24, 2019 meeting also failed to meet the requirement that of the OPMA and is relevant and important to show a concerning JCBOE pattern and plaintiff respectfully requests that this fact is added to

the court. Additionally, the first complaint was initiated on February 4, 2019, the afternoon after the JCBOE's "Emergency meeting" held in violation of the OPMA's meeting notice on February 3, 2019, (the night of the Super Bowl), in part, to try to request the court for an injunction to stay a meeting on the evening of February 4, 2019 ("Special Meeting 2"), that was also in violation of the OPMA and the act's requirement that meeting be publicized 48-hours in advance of the meeting in two designated papers. However, as of today, that meeting has been held, and so Plaintiff respectfully requests to amend the complaint, and request the court find the February 4, 2019 be voided due to the JCBOE's violation of the OPMA's specific 48-hour public notice requirements. Plaintiff respectfully requests to correct the first complaint, attach a brief and revise the order to show cause accordingly. If opposition is timely filed, oral argument is requested.

Dated: February 8, 2019

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By: /s/BCO

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